Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, C.G.

SECOND APPEAL NO. 559 /2005

(Second appeal Under section 100 of Civil Procedure Code)

APPELLANT : Jhaduram S/o Sunderlal Halwa, aged about 60 years, occupation Agriculturer, R/o village Keshkal, Tahsil Keshkal, Distt. Bastar, C.G.
PLAINTIFF

P.R. No. 32/03/05
Presented by Shri A.P. Koshta
dated 9/12/05

VERSUS

RESPONDENTS : 1) Chain Singh S/o Jangali Gond, aged about 62 year, occupation agriculture, R/o village Keshkal, Tahsil Keshkal, Distt. Bastar, C.G.
DEFENDANTS

2) Budhiyarin Bai D/o Raghuwar Halwa aged about 58 years, R/o Village Mudapara, Keshkal, Tahsil Keshkal, Distt. Bastar, C.G.

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3) Tahsildar, Keshkal, Distt. Bastar, C.G.

4) State of Chhattisgarh, through the Collector, Bastar at Jagdalpur, C.G.

SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE

(16)

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL No. 559/2005

Jhaduram

Vs.

Chain Singh and others

Apperance : Shri Vishnu Koshta, counsel for the appellant.

ORAL ORDER
(12.7.2006)

Sunil Kumar Sinha, J.

(1) Heard on admission.

(2) This is the plaintiff's Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 7.9.2005, passed in civil appeal No. 25-A/2004 by the First Additional District Judge, Kanker, District Kanker(CG) arising out of the judgment and decree dated 21.7.2004, passed in civil suit No.173-A/2003 by the Civil Judge Class-I, Kanker (CG). The plaintiff lost in both the Courts.

(3) The brief facts are that the plaintiff filed a suit for declaration of title and also for possession in relation to the agricultural land, described in Schedule-A of the plaint. The plaint allegations are that this land was purchased by the plaintiff through a registered sale deed dated 15.10.1991 (Ex.P-2) from its owners namely- Ramprasad and Budhiyarin Bai, defendant No.2 herein. For proving the transaction, the plaintiff filed a certified copy of the

sale-deed and the copy has been marked as Ex.P-2. The original sale-deed was not filed by the plaintiff. However, one of the witness namely-Gopal was examined as PW-2 and Shridhar Panigrahi was also examined as PW-3 as the scribe of the document.

(4) Evidence of these witnesses has been considered and discussed by the trial Court in para 14 of its judgment dated 21.7.2004. It is mentioned that Gopal ((PW-2), who was a witness to this document, has stated in his examination-in-chief that he has signed the document. Later on, he said that he had put his thumb impression on the same. However, in the cross-examination vide para 3, he has admitted that Ramprasad and Budhiyarin Bai, both the sellers were unable to walk; therefore, they were brought on a vehicle. He has also admitted that Ramprasad and Budhiyarin Bai were saying that they will not go for registration. Ultimately, he admitted that Ramprasad had not put his thumb impression on the document before him and Budhiyarin Bai had also not put her thumb impression on the said document. Not only this, he has further stated that the registered sale-deed was not read over to him and it was also not read over to the executants. Lastly, vide para 3 of his statement, he has admitted that the document is a fraudulent document. His admission is recorded as under :

"यह सही है कि रजिस्ट्री फर्जी है"।

On this evidence, the learned trial Court held that the plaintiff could not prove the execution of a valid sale-deed and therefore, the suit was dismissed. Thereafter, the plaintiff filed an appeal and the Appellate Court also took the similar view and dismissed the appeal of the plaintiff, confirming the judgment and decree passed by the trial Court. It is against this judgment and

decree passed by the lower appellate court, the plaintiff has filed this Second Appeal.

(5) Referring to the provisions of Section 68 of the Evidence Act, learned counsel for the appellant argues that document Ex. P-2, being a sale-deed, was not required to be proved by the attesting witnesses and if the certified copy of the same was produced before the trial Court, the trial Court should have held that the document is proved and a valid title has been transferred. He submits that to this effect, the finding recorded by the trial Court vitiates.

(6) So far as the applicability of Section 68 of the Evidence Act is concerned, it is clear that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least, has been called for the purpose of proving its execution if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence. The proviso says that it shall not be necessary to call an attesting witness if proof of execution of any document not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed, is specifically denied.

Needless to say, since the document in question is a sale-deed, which never required any attestation its execution was not subject to the strict provisions of Section 68. Section 68 would not cover such transactions. However, in the present case, the question of mandatory requirement of examining a marginal witness of the document is not there. The said marginal witness namely-Gopal has been examined in this case and on appreciation, it has been found by

the 2 Courts below that he has not proved a valid execution of the document. On the contrary he has admitted that it was a forged document and in these circumstances, the Courts below have held that the execution of the document has not been proved and they have rejected the claim of the plaintiff.

(7) There appears to be no infirmity in the concurrent findings recorded by the 2 Courts below. The appeal does not involve any substantial question of law. The appeal has no merit; the same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

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